

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ADELA RINER)	
Claimant)	
VS.)	
)	Docket No. 1,026,665
VILLAGE CLEANERS)	
Respondent)	
AND)	
)	
ZURICH N. A. INSURANCE)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the August 21, 2006, preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.

ISSUES

Claimant alleges she either injured both knees or aggravated the arthritis in both knees in a series of traumas that she sustained while working for respondent through December 7, 2005. In the August 21, 2006, Order for Compensation, Judge Avery granted claimant both temporary total disability benefits and medical benefits.

Respondent and its insurance carrier contend Judge Avery erred. They argue claimant's alleged bilateral knee problems resulted from osteoarthritis and, therefore, her injuries were not caused by her work. They also argue claimant's bilateral knee problems were a personal risk and caused by her activities of daily living and for that reason her knee injuries were not incidental to her employment. Accordingly, respondent and its insurance carrier request the Board to reverse the August 21, 2006, Order and deny claimant's request for benefits.

Conversely, claimant contends the August 21, 2006, Order should be affirmed. Claimant argues the evidence establishes the osteoarthritis in her knees was aggravated or worsened by her work as she was required to stand and walk on concrete eight hours per day, which was a hazard specifically related to her employment. Accordingly, claimant argues her bilateral knee injuries arose out of and in the course of her employment with respondent.

The only issue before the Board on this appeal is whether claimant's bilateral knee injuries arose out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member finds and concludes the Order for Compensation should be affirmed.

Respondent, which is a dry cleaning company, employed claimant as a silk finisher, which required claimant to stand for eight hours per day while she operated an automatic press and a utility press. Claimant contends those presses required her to exert some pressure on foot pedals that controlled the steam and vacuum processes. But respondent's owner, Larry Deshazer, testified very little pressure was required to operate the foot pedals. In either event, claimant stood upon a rubber mat while operating the automatic press. But she had to stand upon the concrete floor while operating the utility press, which she did much less often.

Claimant began working for respondent in approximately October 2003. In January 2005 she began experiencing pain in her knees. Despite those symptoms, claimant continued to perform her regular job duties. And as she continued to work, her pain increased.

Claimant believes she first saw her personal physician, Dr. Kate Willingham, in January 2005 for her bilateral knee pain. Claimant was referred to Dr. John Gilbert, who initially prescribed medications and later prescribed cortisone injections. According to claimant, Dr. Gilbert suggested that her symptoms were from standing on concrete and that she should look into another job.

Eventually claimant was referred to orthopedic surgeon Dr. Joseph E. Mumford, who began treating claimant in early November 2005. Dr. Mumford provided joint fluid therapy in the form of Supartz injections. In a March 2006 letter to claimant's then attorney, Dr. Mumford indicated the osteoarthritis in claimant's knees was multifactorial with claimant's obesity playing a significant role. Nonetheless, the doctor also indicated that arthritis could be aggravated by almost any physical activity ranging from simple walking to work activities.

There is no question that claimant's present knee problems stem from the osteoarthritis in both knees. And claimant testified she had never seen a doctor or had any treatment for either knee before her symptoms began in January 2005. The only issue is whether claimant's work activities aggravated, accelerated or intensified her condition.

Orthopedic surgeon Dr. Edward J. Prostic saw claimant in early April 2006. Dr. Prostic concluded the prolonged standing at work and claimant's excessive weight accelerated the osteoarthritis in claimant's knees. Moreover, the doctor determined claimant needed a total left knee replacement at this time and that she will need a total right knee replacement in the future. Dr. Prostic was hired by claimant's then attorney to evaluate claimant for purposes of this claim.

Conversely, internal medicine and occupational physician Dr. Chris D. Fevurly examined claimant in early July 2006. Dr. Fevurly also determined there was an imminent need for left knee replacement and that claimant would probably require a right knee replacement in one or two years. But, more importantly, Dr. Fevurly concluded it was unlikely claimant's job duties significantly aggravated, or contributed to, the severe degenerative arthritis in her knees. Instead of her work activities, the doctor attributed claimant's knee problems to her morbid obesity, genetic factors and gender. Dr. Fevurly was hired by respondent's insurance carrier to evaluate claimant for purposes of this claim.

Based upon the evidence presented to date, the Judge concluded claimant's work activities aggravated her arthritic condition and, therefore, the Judge awarded her preliminary hearing benefits. This Board Member agrees. Dr. Prostic relates claimant's knee problems to her work. And Dr. Mumford, who appears to be the least biased of the three physicians who addressed the cause of claimant's present knee problems, indicated that work activities could aggravate an arthritic condition. Considering the medical opinions, plus claimant's testimony regarding the standing she did all day at work, this Board Member finds it is more probably true than not true that claimant's work aggravated the arthritis in her knees. Accordingly, for preliminary hearing purposes, claimant has established that she has sustained accidental injury in a series of traumas arising out of and in the course of her employment with respondent.

In summary, the Order for Compensation should be affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.¹ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, the undersigned Board Member affirms the August 21, 2006, Order for Compensation entered by Judge Avery.

¹ K.S.A. 44-534a.

IT IS SO ORDERED.

Dated this ____ day of October, 2006.

BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
David J. Bogdan, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge